

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL REVISION APPLICATION No. 860 of 2004****For Approval and Signature:****HONOURABLE MR.JUSTICE A.M.KAPADIA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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PRAJAPATI VISHNUBHAI BHIKHABHAI - Applicant(s)

Versus

JYOTSANABEN, D/O. MOHANLAL KHEMCHAND THRO'JIGNESH V. & 1 - Respondent(s)

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Appearance :

MR MR VYAS FOR MR PN BAVISHI for Applicant(s) : 1,
MR CHIRAG M PAWAR for Respondent(s) : 1,
MR HM PRACHCHHAK APP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 10/10/2005

ORAL JUDGMENT

1. By filing instant petition under Section 397 read with Section 401 of the Code of Criminal Procedure ('the Code' for short), petitioner/husband seeks to challenge

the order dated 8.12.2004 rendered in Criminal Revision Application No. 94 of 2004 by the learned Additional Sessions Judge, Gandhinagar, Fast Track Court No.2, by which the revision application filed by respondent No.1/wife came to be allowed and thereby the order dated 11.8.2004 recorded below application Ex.25 in Criminal Misc. Application No.19 of 2003 by the learned Judicial Magistrate, First Class, Mansa has been quashed and set aside.

2. The petitioner is the husband of respondent No.1 Jyotsnaben and father of minor Jignesh Vishnubhai Prajapati. Marriage of the petitioner was solemnized with respondent No.1 before 15 years and out of the said wedlock, respondent No.1 gave birth to a male child Jignesh. According to the case of respondent No.1, as she was being neglected by the petitioner, she went to her parent's house at Vijapur. She thereafter filed an application under Section 125 of the Code being Criminal Misc. Application No.186 of 1996 for receiving maintenance. The learned Judicial Magistrate, First Class, Vijapur vide order dated 30.4.1997 awarded maintenance of Rs.400/- per month in favour of respondent No.1 and Rs.300/- per month in favour of her minor son Jignesh.

3. Respondent No.1 thereafter on 16.5.2002 filed Criminal Misc. Application No.41 of 2002 in the Court of learned JMFC, Vijapur under Section 127 of the Code for enhancement of the amount of maintenance. During the pendency of the said application, respondent No.1 moved another application being Criminal Misc. Application No.19 of 2003 in the Court of learned JMFC, Mansa under Section 127 of the Code seeking enhancement of the maintenance amount. In the said application the petitioner filed an application Ex.25 pointing out that the previous application being Criminal Misc. Application No.41 of 2002 filed by respondent No.1 in the Court of learned JMFC, Vijapur was pending when Criminal Misc. Application No.19 of 2003 was filed by respondent No.1/wife and this fact has been suppressed by respondent No.1 in Criminal Misc. Application No.19 of 2003 filed in the Court of learned JMFC, Mansa and therefore he prayed to dismiss the application.

4. The learned JMFC, Mansa, after hearing the learned advocates appearing for the parties, came to the conclusion that respondent No.1 has suppressed the fact of pendency of Criminal Misc. Application No. 41 of 2002 in the Court of learned JMFC, Vijapur and has allowed the

application Ex.25 and thereby rejected the application being Criminal Misc. Application No.19 of 2003 seeking enhancement of the amount of maintenance vide order dated 11.8.2004.

5. Aggrieved thereby, respondent No.1/wife filed Criminal Revision Application No.94 of 2004 in the Sessions Court, Gandhinagar which was heard by the learned Additional Sessions Judge, Gandhinagar, Fast Track Court No.2, who vide order dated 8.12.2004 allowed the revision application and thereby quashed and set aside the order dated 11.8.2004 recorded below Ex.25 in Criminal Misc. Application No.19 of 2003 by the learned JMFC, Mansa which has given rise to the present petition at the instance of the petitioner/husband.

6. This Court has considered the submissions advanced by Mr. M.R. Vyas, learned advocate for Mr. P.N. Bavishi, learned advocate for the petitioner, Mr. Chirag M. Pawar, learned advocate for respondent No.1/wife who has appeared by way of legal aid and Mr. HM Prachchhak, learned APP for respondent No.2 - State of Gujarat and also perused the impugned order as well as other orders passed by the learned JMFC, Vijapur as well as JMFC, Mansa and the reply affidavit so also the affidavit in

rejoinder.

7. So far as the factual matrix with regard to the filing of the application seeking maintenance amount by respondent No.1/wife against the petitioner/husband is concerned, there is no dispute. The only question which calls for determination is as to whether respondent No.1/wife has suppressed material fact of filing and pendency of Criminal Misc. Application No.41 of 2002 in the Court of learned JMFC, Vijapur under Section 127 of the Code for enhancement of the maintenance in Criminal Misc. Application No.19 of 2003 filed by her before the learned JMFC, Mansa. On perusal of the impugned order passed by the learned JMFC, Mansa, there is no manner of doubt that when respondent No.1/wife filed Criminal Misc. Application No.19 of 2003 in the Court of learned JMFC, Mansa, seeking enhancement of maintenance amount, previous application being Criminal Misc. Application No.41 of 2002 filed in the Court of learned JMFC, Vijapur under section 127 of the Code for enhancement of maintenance amount was very much pending which came to be subsequently withdrawn and, therefore, according to this court, the learned JMFC, Mansa has very rightly held that respondent No.1/wife has suppressed material fact of pendency of previous application filed by her in the

Court of learned JMFC, Vijapur. This aspect has been totally overlooked by the learned Additional Sessions Judge while passing the impugned order. The learned Additional Sessions Judge has recorded the finding that Mansa Court has also territorial jurisdiction since respondent No.1/wife at the relevant time was residing within the territorial jurisdiction of Mansa Court and therefore there cannot be any dispute about learned JMFC Mansa having territorial jurisdiction over the matter. However, since respondent No.1/wife has suppressed the material fact of pendency of Criminal Misc. Application No.41 of 2002 before the learned JMFC, Vijapur, the learned JMFC, Mansa has rightly rejected the application filed by her in his court and, therefore, the learned Additional Sessions Judge ought not have interfered with the order passed by the learned JMFC, Mansa in exercise of revisional jurisdiction under section 397 of the Code.

8. Seen in the above context, this petition deserves to be allowed by quashing and setting aside the impugned order dated 8.12.2004 recorded in Criminal Revision Application No.94 of 2004 by by the learned Additional Sessions, Gandhinagar, Fast Track Court No.2.

9. For the foregoing reasons, the petition succeeds and

accordingly it is allowed. The impugned order dated 8.12.2004 rendered in Criminal Revision Application No.94 of 2004 by the learned Additional Sessions Judge, Gandhinagar, Fast Track Court No.2, is hereby quashed and set aside, as a consequence thereof the order dated 11.8.2004 recorded in Criminal Misc. Application No.19 of 2003 by the learned JMFC, Mansa is confirmed the result of which is that Criminal Misc. Application No.19 of 2003 is rejected.

10. However, it would be open for respondent No.1/ wife to file fresh application seeking enhancement of the maintenance amount awarded in her favour and in favour of her minor son Jignesh by the learned JMFC, Vijapur in any appropriate court having territorial jurisdiction.

11. The amount of Rs.15,000/- which has been deposited by the petitioner/husband, in pursuance of the order dated 17.1.2005 passed by this Court, in the court below (before the Sessions Court, Gandhinagar) is permitted to be withdrawn by respondent No.1/wife which shall be adjusted towards her maintenance amount.

Rule is made absolute.

(A.M. Kapadia, J.)

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